

GAUTENG DEPARTMENT OF EDUCATION
SENIOR CERTIFICATE EXAMINATION

MERCANTILE LAW SG

OCTOBER / NOVEMBER 2005
OKTOBER / NOVEMBER 2005

TIME: 3 hours

MARKS: 300

INSTRUCTIONS:

- Question 1 is **compulsory**.
 - Answer any FIVE questions from Questions 2 to 9.
 - Do not answer more than SIX questions. If you answer more, only the first six questions will be marked.
 - Plan the length of your answers according to the marks allocated to each question.
 - Number each question in accordance with the numbering system used in this question paper.
 - Please ensure that your answers are neatly and systematically arranged.
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**QUESTION 1
COMPULSORY**

Complete the following sentences by filling in the missing words. Write down the correct answer(s) next to the appropriate question number.

- 1.1 The _____ partner may not interfere in the management and control of the partnership, but has the right of access to the books.
- 1.2 When the court sequestrates the estate of a partnership, it simultaneously sequestrates the estate of each member of that partnership. This, however, does not apply to the _____ partner.
- 1.3 In the case of _____ the sheriff of the court attaches the property of a debtor in execution of a court decision.
- 1.4 Contract of surety is entered into _____.
- 1.5 Incorporeal rights are pledged by means of _____.
- 1.6 A _____ is a stipulation in terms of which the landlord obtains the right to terminate the lease if the tenant fails to pay his/her rent on due date.
- 1.7 A long term lease (lease of 10 years and longer) has to be presented in _____ and has to be _____.

1.8 A _____ is a person who, without being instructed, acts on behalf of one who is absent in order to safeguard that person's property against destruction.

1.9 Delegatus non potest delegare means _____.

9x2=(18)

State whether the following statements are TRUE or FALSE. If the answer is FALSE, correct that part of the statement, which is in bold.

1.10 In order to cede both the rights and the obligations under a lease, the consent of all **three parties** is necessary, i.e. of the landlord, the tenant and the new tenant.

1.11 If the Registrar of Companies is satisfied that all the requirements have been fulfilled, the Registrar will enter the company in his register and issue a **certificate to commence business**.

1.12 The **association agreement** serves as the charter of the close corporation.

1.13 Immediately after the issue of the **letter of appointment**, the executor must take into custody all goods, books or documents of the deceased.

1.14 Legally all persons of **14 years** and older, are able to act as witness at the making of a will.

1.15 A **reciprocal will** is a will made by two or more persons, who need not necessarily be married. The will may be changed, without the knowledge of the other party.

(16)

Choose the correct answer and write down only the appropriate letter next to the number of each question.

1.16 Which one of the following is a Close Corporation?

- A. Sanlam **Ltd**
- B. Johannesburg **(Pty.) Ltd**
- C. Myprodol **C.C**
- D. Andre & Natalie

1.17 A pledgee obtains a right over the debtor's property which _____.

- A. was sold to him
- B. has been delivered to him as surety
- C. the debtor has given to him as a gift
- D. incidentally comes into the possession of the pledgee

1.18 Which document stipulates the name of company?

- A. Memorandum of association
- B. Articles of association
- C. Companies agreement
- D. Prospectus

1.19 The minimum and maximum number of members that may perform in a private company is _____.

- A. 1 to 10
- B. 2 to 20
- C. 1 to 50
- D. 7 to number of shares issued

4x2=(8)

Describe in short the following terms:

1.20 Rehabilitation

1.21 Insolvency

1.22 Rule nisi

1.23 Preference creditors

4x2=(8)
[50]

QUESTION 2 CLOSE CORPORATION / THE COMPANY LAW

2.1 What are the mutual obligations of the members of a close corporation? (10)

2.2 Name any FIVE particulars that are required in the founding statement of a Close Corporation. (10)

2.3 State FOUR features of a public company. (8)

2.4 Name FIVE documents that must be submitted when the application for registration of a public company is made. (10)

2.5 Explain how and under what circumstances the change of the name of a company takes place. (6)

2.6 Name SIX details that have to be stated in the members' register of a public company. (6)
[50]

QUESTION 3 LEASE OF IMMOVABLE PROPERTY

3.1 Mention FIVE factors which the landlord and Rent Board will take into consideration in fixing a reasonable rent. (10)

3.2 Explain how the tenant of a dwelling is protected by the Rent Act. (4)

3.3 List FIVE cases where an order for eviction will be issued to the tenant. (10)

- 3.4 Write short notes on the general rule of law that “hire goes before sale”. (8)
- 3.5 You wish to enter into a lease contract. On which THREE points must you and the landlord definitely agree? (6)
- 3.6 What will your duties as tenant be if you decide to rent a house? (6)
- 3.7 Explain what measures are available to a tenant where a landlord is in breach of his warranty against interference. (6)
- [50]**

**QUESTION 4
PLEDGES AND MORTGAGES / AGENCIES**

- 4.1 Name THREE implied pledges that are formed by operation of the law. (6)
- 4.2 Name and discuss TWO special clauses in a mortgage bond. (10)
- 4.3 Name and discuss FOUR different ways of terminating pledges / mortgages. (12)
- 4.4 State the TWO requirements for the existence of an agency contract by estoppel. (4)
- 4.5 Briefly state FOUR requirements that are involved in the agent's duty of good faith. (8)
- 4.6 Explain the duty of the principal to pay his agent his remuneration. (10)
- [50]**

**QUESTION 5
SURETYSHIP / LIENS**

- 5.1 Mention TWO forms of security which creditors may use to protect themselves against the possibility of bad debts. (2)
- 5.2 Write down the formalities required for effecting a suretyship agreement. (6)
- 5.3 State whether the following agreements are valid suretyship agreements. Give reasons for your answer.
- 5.3.1 John orally agrees with a creditor to stand surety for a debt up to R500 incurred by his friend.
- 5.3.2 A facilitator stands surety for the conduct, honesty, and reliability of a learner.
- 5.3.3 Ms Apple stands surety in writing for Mrs Pear for a debt incurred by her at BB Bank. Ms Apple is a minor. (8)

- 5.4 What are the rights of a surety as against the creditor of the principal debtor? Also state under what circumstances may the surety avail himself of these rights. (12)
- 5.5 Explain the TWO requirements which possession must comply with in valid liens. (6)
- 5.6 Explain the TWO conditions for the existence of a valid enrichment lien. (6)
- 5.7 Study the following example and answer the questions that follow: Samona takes her car to Siphso for repair work. He repairs the car at a cost of R800.00.
- 5.7.1 What type of lien is implied in the example? (2)
- 5.7.2 Can Siphso keep the car until Samona pays for the repairs? Give a reason for your answer. (4)
- 5.7.3 List TWO conditions for the existence of the lien mentioned in Question 5.7.1. (4)
- [50]**

QUESTION 6
NEGOTIABLE DOCUMENTS / INSOLVENCY

- 6.1 Name THREE parties involved with a cheque transaction and state the function of each party. (6)
- 6.2 Name TWO ways of crossing a cheque. (2)
- 6.3 Explain, in full, the relationship between the banker and the client. (10)
- 6.4 On the return day of the rule nisi, the Court is assured of three facts on which the provisional sequestration order was based. Name these THREE facts. (6)
- 6.5 The Insolvency Act makes provision for acts of insolvency, which are conclusive proof of insolvency. Name FIVE of these acts. (10)
- 6.6 Name FIVE duties of the trustee of an insolvent estate. (10)
- 6.7 Choose the correct word(s) from within the brackets in each case and write down only the answer next to the question number.
- 6.7.1 The insolvent estate is divided into two portions, namely the free residue and (preference creditors / specially-secured portion).
- 6.7.2 The (statement of affairs / list of assets and liabilities) takes the form of a balance sheet and also shows the personal details of the insolvent.
- 6.7.3 The (master / trustee) presides as chairman at all meetings of creditors. (6)

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QUESTION 7
PARTNERSHIP / INSOLVENCY

- 7.1 Explain why it is important that partners take out an insurance policy, and state who is liable for the payment of the premiums. (6)
- 7.2 Explain partnership agreement under the following:
- 7.2.1 The origin (6)
- 7.2.2 FIVE matters which may appear in a partnership agreement (5)
- 7.3 Explain the **aim is making a profit** as one of the essentials of a partnership agreement. (8)
- 7.4 Explain the effect of an order sequestration on the property of the solvent spouse. (10)
- 7.5 List the order in which the distribution of the free residue takes place. (10)
- 7.6 Complete the following formalities of notice of voluntary surrender:
- 7.6.1 The debtor must publish a notice of surrender in the _____ and in a _____ where he stays.
- 7.6.2 Within seven days of such publication he must deliver or post a copy of the notice to every _____.
- 7.6.3 The person must lodge at the office of the _____ two copies of a _____.
- (5)
[50]

QUESTION 8
WILLS / COMPANY LAW

- 8.1 Explain the **completion** of the administrative process of the deceased estate. (10)
- 8.2 Complete the following sentences on the appointment of an executor. Write down the correct answer next to the appropriate question number.
- 8.2.1 An executor is usually named in the _____.
- 8.2.2 If the executor is legally capable, the appointment is confirmed by the master and a _____ is issued.
- 8.2.3 If an executor is not named, the master will publish a notice in the _____.
- (6)

- 8.3 Name FIVE formalities for the execution of an ordinary will. (10)
- 8.4 Name FIVE characteristics to which a company limited by guarantee (Section 21 company) is subjected. (10)
- 8.5 Explain the factors that must be taken into consideration when changing and amending the articles of association. (6)
- 8.6 State FOUR differences between a company and a natural person. (8)
- [50]**

QUESTION 9 GENERAL

Carefully read the advertisement, then answer the following questions:

CAISER CHEFS AUCTIONEERS PTY (LTD).

In authorisation of liquidator of Health and Racquet CC (in liquidation). Insolvent estate of Fatima. By public auction, without reserve sell the following:

Bicycles, treadmills, new and old computers, office and home furniture.

On: Friday 1 November 2005. Plot number 52, Roodepoort.

Terms: R2 100 (back) deposit on registration. Balance cash or bank guaranteed cheques, by close of sale. Sale of goods is voetstoots.

- 9.1 What is the primary cause for this liquidation auction? (4)
- 9.2 Explain the term **liquidation**. (4)
- 9.3 Whose assets will be auctioned? (2)
- 9.4 Are the movable assets to be auctioned accompanied by any guarantee? Substantiate your answer. (4)
- 9.5 Define the role of the auctioneer. (4)
- 9.6 Explain the type of ownership in each of the following:
- 9.6.1 The auctioneers
- 9.6.2 Health and Racquet (4)
- 9.7 What is meant by an auction when it is advertised "without reserve"? (2)
- 9.8 Briefly explain the procedure if the principal stipulated a reserve price. (4)

- 9.9 Are credit sales allowed at this auction? Explain your answer (4)
- 9.10 You altered the cheque. Will the auctioneers accept the cheque? Substantiate your answer. (4)
- 9.11 The auctioneer has a lien for his commission. On what is the lien? Name the type of lien. (4)
- 9.12 You (assume that you are older than 21) signed as surety for Fatima. Are you now responsible for her debt at the bank? Substantiate your answer. (4)
- 9.13 Explain the duty of the agent (auctioneer) doing the mandate in person. (6)

[50]**TOTAL: 300****END**